

**DATE:** February 29, 2008

**TO:** David M. Spooner  
Assistant Secretary  
for Import Administration

**FROM:** Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

**RE:** Issues and Decision Memorandum for the Final Results in the Expedited Second Sunset Review of the Antidumping Duty Order on Persulfates from the People's Republic of China

## **SUMMARY**

We have analyzed the substantive response of the domestic interested parties in the sunset review of the antidumping duty order on persulfates from the People's Republic of China ("PRC"). We recommend that you approve the positions we describe in this memorandum. Below is a complete list of issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the dumping margin likely to prevail.

### History of the Order

On July 7, 1997, the Department of Commerce ("the Department") issued an antidumping duty order on imports of persulfates from the PRC. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Persulfates From the People's Republic of China*, 62 FR 36259 (July 7, 1997), amended by *Notice of Amended Antidumping Duty Order: Persulfates From the People's Republic of China*, 62 FR 39212 (July 22, 1997). The Department established a weighted-average margin of 32.22 percent for Sinochem Jiangsu Wuxi Import & Export Corporation; 34.41 percent for Shanghai AJ Import & Export Corporation; 34.97 percent for Guangdong Petroleum Chemical Import & Export Trade Corporation; and 119.02 percent for the PRC-wide entity.

The Department conducted several administrative reviews prior to the period of the first sunset review. *See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 64 FR 69494 (December 13, 1999), and *Persulfates From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review*, 65 FR 1356 (January 10, 2000); *Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review*, 65 FR

46691 (July 31, 2000); and *Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 66 FR 42628 (August 14, 2001).

The Department published the notice of initiation of the first sunset review on June 3, 2002, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). See *Notice of Initiation of Five-Year ("Sunset") Review of Antidumping Duty Order on Persulfates from the People's Republic of China*, 67 FR 38331 (June 3, 2002). As a result of that review, the Department determined that revocation of the antidumping duty order would be likely to lead to a continuation or recurrence of dumping with the following rates:

<u>Exporter</u>	<u>Margin</u>
Sinochem Jiangsu Wuxi Import & Export Corporation (Wuxi)	32.22
Shanghai Ai Jian Import & Export Corporation (Shanghai AJ)	34.41
Guangdong Petroleum Chemical Import and Export Trade (Guangdong Petroleum)	34.97
PRC-wide entity	119.02

See *Final Results of Expedited Sunset Review: Persulfates From the People's Republic of China*, 67 FR 62226 (October 4, 2002).

The International Trade Commission ("the ITC") determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on persulfates from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See *Persulfates From China*, 67 FR 66001 (October 29, 2002), and USITC Publication 3555 (October 2002), Investigation No. 731-TA-749 (Review).

As a consequence of the first sunset review, the Department published a notice of continuation of this antidumping duty order. See *Notice of Continuation of Antidumping Duty Order: Persulfates from the People's Republic of China*, 67 FR 78415 (December 24, 2002).

Since the final results of the first sunset review, the Department has completed several additional administrative reviews. See *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 6712 (February 10, 2003); *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 68030 (December 5, 2003); *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005); and *Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative*, 71 FR 7725 (February 14, 2006).

In addition, the Department conducted a changed circumstances review. In that review, the Department found that Degussa-AJ (Shanghai) Initiators Co., Ltd.'s ("Degussa-AJ") investment in Shanghai Ai Jian Reagent Works ("AJ Works") did not change the factors of production of merchandise sold by Shanghai AJ. Pursuant to section 351.222(b)(3) of the Department's

regulations, the Department will partially revoke an order, with respect to a particular exporter (e.g., Ai Jian), only with respect to subject merchandise produced or supplied by the producer(s) that supplied the exporter during the time period that forms the basis for the revocation (i.e., three consecutive years). As a result of the changed circumstances review, because the Department found that Degussa-AJ had not changed substantially since Degussa AJ's investment in AJ Works, the Department stated it will consider in any future revocation inquiry, if applicable, the results of prior administrative reviews in which Shanghai AJ procured from AJ Works its products exported to the United States. *See Persulfates from the People's Republic of China: Notice of Final Results of Changed Circumstances Review*, 68 FR 68031 (December 5, 2003).

The Department has conducted no scope rulings with respect to this antidumping duty order.

### Background

On November 1, 2007, the Department published the notice of initiation of the sunset review of the antidumping duty order on persulfates from the PRC pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Reviews*, 72 FR 61861 (November 1, 2007) ("*Initiation Notice*"). On November 16, 2007, the Department received a Notice of Intent to Participate from domestic interested party FMC Corporation ("FMC"), within the deadline specified in section 315.218(d)(1)(i) of the Department's regulations. FMC claimed interested party status under section 771(9)(C) of the Act, and 19 CFR 351.102(b), as a domestic producer of persulfates. On December 3, 2007, FMC submitted a substantive response within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We did not receive responses from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department determined to conduct an expedited review of the order.

### Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted a sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments made by FMC in this proceeding.

## 1. Likelihood of continuation or recurrence of dumping

### Interested Party Comments

FMC asserts that the Act requires the Department to determine whether revocation of an antidumping duty order would be likely to lead to continuation or recurrence of dumping, citing section 752(c)(1) of the Act; and *Procedures for Conducting Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998). FMC also asserts that the Department should consider (1) the weighted-average dumping margins determined in the investigation and subsequent reviews, and (2) the volume of imports of the subject merchandise for the periods before and after the issuance of the antidumping duty order. FMC references section 752(c)(1) of the Act; and *Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (“*Sunset Policy Bulletin*”).

FMC argues that, as stated in the Statement of Administrative Action: “The existence of zero or *de minimis* dumping margins at any time while the order was in effect shall not in itself require {the Department} to determine that there is no likelihood of continuance or recurrence of dumping.”<sup>1</sup> FMC adds that, as further provided by the SAA, “existence of dumping margins after the order . . . is highly probative of the likelihood of continuation or recurrence of dumping.”<sup>2</sup> According to FMC, the Department has established, as a matter of policy, revocation of an antidumping order is likely to lead to continued or recurring dumping where: (1) dumping continued at any level above *de minimis*; (2) imports of the subject merchandise ceased after the issuance of the order; or (3) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.<sup>3</sup>

With regard to the cessation of imports, FMC asserts that two of the three respondent companies from the original investigation withdrew from the U.S. market shortly after imposition of the order. First, FMC notes that in response to the Department’s questionnaire in the second administrative review, Wuxi reported no shipments of subject merchandise during the period of review<sup>4</sup> and, after confirming that Wuxi made no shipments, the Department rescinded the review with respect to Wuxi. In the same review, FMC notes that Guangdong Petroleum refused to cooperate with the Department’s request for information and was assigned the PRC-wide rate of 119.02 percent.<sup>5</sup> Likewise, in the subsequent review, FMC points out that Wuxi refused to

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<sup>1</sup> FMC cites the Statement of Administrative Action (“SAA”), H.R. Doc. No. 103-316, vol. 1 (1994) at 890.

<sup>2</sup> *Id.*

<sup>3</sup> FMC cites *Sunset Policy Bulletin* at II.A.3.

<sup>4</sup> July 1, 1998 through June 30, 1999.

<sup>5</sup> FMC cites *Persulfates From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review*, 65 FR 46691 (July 31, 2000).

cooperate with the Department's request for information, and was also assigned the PRC-wide rate of 119.02 percent.<sup>6</sup>

In addition, FMC states that Shanghai AJ certified in the 2006-2007 review that it made no shipments of subject merchandise during the review period, and that the Department was still investigating Shanghai AJ's claims of no shipments at the time it filed its comments in the instant review. FMC submits that the cessation of imports by Wuxi, Guangdong Petroleum and, allegedly, by Shanghai AJ, demonstrates that the companies are unable to ship to the United States without dumping. FMC explains that, as stated in the SAA:

The cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. . . . If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to re-enter the U.S. market, they would have to resume dumping.<sup>7</sup>

FMC claims that on an industry-wide basis, PRC exports of persulfates to the United States are moving toward historical lows. FMC suggests that this is further evidence that PRC companies generally cannot participate in the U.S. market without dumping. FMC maintains that since 1997, the year in which the order was issued, import volumes from the PRC have consistently stayed well below the level of pre-order, *i.e.*, 1996, import volume. Such declines in import volume, says FMC, provide compelling evidence that PRC companies are unable to export persulfates to the United States without dumping.

FMC notes that dumping margins have continued at above *de minimis* levels since the issuance of the antidumping duty order in July 1997. FMC notes that the current margin for Shanghai AJ is 36.53 percent, and that all other PRC exporters receive the PRC-wide rate of 119.02 percent.

FMC argues that because import volumes have declined significantly since issuance of the order, and margins have continued at above *de minimis* levels, the Department must find that, if the antidumping duty order on persulfates from the PRC were revoked, dumping by PRC exporters would likely continue or recur.

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<sup>6</sup> FMC cites *Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 66 FR 42628 (August 14, 2001).

<sup>7</sup> SAA at 890.

## Department Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (“URAA”),<sup>8</sup> the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. *See, e.g., Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007), and accompanying Issues and Decision Memorandum at comment 1; *see also, Pure Magnesium in Granular Form from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 5417 (February 6, 2007), and accompanying Issues and Decision Memorandum at comment 1. In this case, the Department found dumping at above *de minimis* levels in the original antidumping duty investigation of persulfates from the PRC, as well as in the subsequent administrative reviews it has conducted since the original antidumping duty investigation. In fact, the Department calculated a margin of 36.53 percent for Shanghai AJ in the most recently completed review of this order.<sup>9</sup> Further, the PRC-wide rate of 119.02 percent remains in effect for all other exporters of persulfates from the PRC.

Consistent with section 752(c)(1)(B) of the Act, the Department also considers the volume of imports of subject merchandise before and after issuance of the order. In reviewing import statistics obtained from the ITC Trade DataWeb web site, the Department has noted that the level of imports of persulfates from the PRC fluctuated in volume during the period of this sunset review, and that imports are higher in volume than before the order was put in place. As stated above, the Department published the notice of continuation of the antidumping duty order on persulfates from the PRC on December 24, 2002. *See* 67 FR 78415. Despite FMC’s argument that the level of pre-order imports have declined, our own analysis indicates otherwise. Using statistics provided by the ITC Trade Dataweb, the Department finds that imports of persulfates from the PRC dramatically decreased in 2003 from the prior year, when the Department published the continuation notice. However, in 2004, imports increased to a level above that of 2002. In addition, following an initial decrease in imports in 1997 compared with 1996, the last complete year before the issuance of the order, imports have been higher than the 1996 level every year with the exception of 2003, which, as noted above, was the first year following the notice of continuation of the order following the first sunset review. *See* import statistics provided at Attachment 1.<sup>10</sup>

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<sup>8</sup> *See, e.g.,* SAA accompanying the URAA, H.R. Doc. No. 103-316, vol. 1, 889 (1994) (“SAA”); House Report, H. Rep. No. 103-826, pt. 1 (1994); and Senate Report, S. Rep. No. 103-412 (1994).

<sup>9</sup> *See Persulfates From the People’s Republic of China: Final Results of Antidumping Duty Administrative*, 71 FR 7725 (February 14, 2006).

<sup>10</sup> The Department ran a query using the following HTS categories: 2833.40.10, 2833.40.20, 2833.40.50, and 2833.40.60. There were no data for categories 2833.40.10 or 2833.40.50. The Department’s analysis of import trends is based on the aggregate data contained in categories 2833.40.20 and 2833.40.60, as shown in Attachment I.

Not only have imports from the PRC increased since the order, companies have also continued to dump with the discipline of an order in place. The Department finds that the existence of dumping margins even with an order in place is highly probative of the likelihood of continuation or recurrence of dumping, if the order were to be revoked. Therefore, the Department determines that dumping would likely continue or recur if the order were revoked.

## 2. Magnitude of the Margins Likely to Prevail

### Interested Party Comments

FMC states that section 752(c)(3) of the Act directs the Department to provide the ITC with the magnitude of dumping that is likely to prevail if the Department revokes the order. FMC adds that the SAA, at 890, states that the Department will normally select a margin “from the investigation, because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order.” FMC argues that there is no reason to depart from the normal policy in this case.

FMC explains that the Department calculated the following company-specific margins in the original investigation: 34.41 percent for Wuxi, 32.22 percent for Shanghai AJ, and 34.97 percent for Guangdong Petroleum, and applied a rate of 119.02 percent to the PRC entity. According to FMC, these rates should be provided to the ITC as indicative of the magnitude of dumping margins likely to prevail if the order were to be revoked.

### Department Position

Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. Normally, the Department will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Although the Department has completed several administrative reviews since the issuance of the antidumping duty order, the Department does not find any indication that the margins calculated in the administrative reviews are more probative of the behavior of manufacturers, producers and exporters without the discipline of the order, because the margins calculated in the original investigation are the only calculated rates without the discipline of an order in place. Therefore, consistent with section 752(c)(3) of the Act, the Department will report to the ITC the corresponding individual company rates and the PRC-wide rate from the original investigation as noted in the “Final Results of Review” section, below.

### Final Results of Review

We determine that revocation of the antidumping duty order on persulfates from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

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Manufacturers/Exporters/Producers Weighted-Average Margin (percent)

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Sinochem Jiangsu Wuxi Import & Export Corporation (Wuxi)	32.22
Shanghai Ai Jian Import & Export Corporation (Shanghai AJ)	34.41
Guangdong Petroleum Chemical Import and Export Trade (Guangdong Petroleum)	34.97
PRC-wide	119.02

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Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the *Federal Register*.

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Stephen J. Claeys  
Acting Assistant Secretary  
for Import Administration

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(date)

# **Attachment I**

**Imports of Persulfates to the United States from the PRC  
United States International Trade Commission DataWeb**